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**BEFORE THE ARIZONA CORPORATE COMMISSION**

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| IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES §§ 40-360, *et seq.*, FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE TS-5 TO TS-9 500/230kV TRANSMISSION LINE PROJECT, WHICH ORIGINATES AT THE FUTURE TS-5 SUBSTATION, LOCATED IN THE WEST HALF OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 4 WEST AND TERMINATES AT THE FUTURE TS-9 SUBSTATION, LOCATED IN SECTION 33, TOWNSHIP 6 NORTH, RANGE 1 EAST, IN MARICOPA COUNTY, ARIZONA. | Case No. 138<br><br>Docket No. L-00000D-08-0330-00138<br><br>**10,000 WEST L.L.C.'S APPLICATION FOR RECONSIDERATION** |



Pursuant to A.R.S. § 40-253(A), intervener 10,000 West, L.L.C. hereby files it Application for Rehearing in the above-referenced matter. 10,000 West requests that the Arizona Corporation Commission ("Commission") reconsider its Order 70850, granting the Certificate of Environmental Compatibility ("CEC") issued by the Arizona Power Plant and

Transmission Line Siting Committee ("Committee") in this matter.[1]

## I. INTRODUCTION.

This is a case in which the Commission has approved an electrical transmission line project ***in spite*** of uncontroverted evidence conclusively establishing that the project is not needed. There is no valid electrical engineering rationale for the TS-5 to TS-9 230/500kV Project ("Project"). As set forth in greater detail below, and contrary to the Arizona Public Service Corporation's ("Applicant") conclusory claims, the uncontroverted evidence shows that the 500kV portion of the Project is not necessary to increase reliability within the 500kV system; that 500kV portion of the Project is not necessary to increase import capability into the Phoenix metropolitan area; that the 500kV portion of the Project is not necessary to complete a "loop" around the Phoenix metropolitan area; and that the 230kV portion of the Project is not necessary to serve any discernible future load growth in the region. Indeed, these facts went unchallenged by the Applicant during its cross-examination of 10,000 West's electrical engineering expert, Dr. Hyde Merrill, and during its subsequent rebuttal case at the Committee hearings.

Instead of addressing these deficiencies with the Applicant during its recent hearings, the Commission attempted to justify the Project based on the purported need to transport

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[1] 10,000 West was the owner of a 10,000 acre parcel of land in Buckeye, Arizona along the Sun Valley Parkway. The entire parcel is being developed into a mixed-use development known as Festival Ranch, and while 10,000 West sold 3,000 acres to Pulte Homes, it retains 7,000 acres subject to the Master Plan. The Festival Ranch Community Master Plan has been approved by the Town of Buckeye, providing for 40,000 residents and over 7 million square feet of entitled commercial space. On July 21, 2008, 10,000 West became a party to the proceeding by filing its Notice of Intervention.

"renewable" energy into the Phoenix metropolitan area. *See* February 19, 2009 Transcript at 58:23-59:6; 63:5-13; 67:9-18; 68:23-69:24. This, despite the fact that "renewable" energy is nowhere mentioned by the Applicant in any of its newsletters to the public; is not found anywhere in the Application; and was admittedly only mentioned as an afterthought by the Applicant during the Committee hearings, at which point in the hearings the Applicant actually acknowledged that the Project is not necessary to transport renewable energy into the Phoenix metropolitan area. *See* October 20, 2008 Transcript at 1130:15-:1131:3; *see also* Application. Indeed, the Applicant testified that only one renewable project has been approved in Southern Arizona and that transmission lines are already in place to transmit electricity from that project into Phoenix. October 20, 2008 Transcript at 1130:15-:1131:3. The Applicant further acknowledged that it is unclear when other renewable projects will be approved and/or built in Southern Arizona, if ever. *Id.* at 1127:1-11. Despite this evidence, the Commission approved the CEC based largely on the false claim that the Project is "necessary" to bring renewable energy into Phoenix.

Other than to bolster the Applicant's belated and baseless claims regarding renewable energy, the Commission only focused on one other element of need during its hearings: the purported need to increase export capability out of the Palo Verde Hub. In its newsletters to the public and in its Application, the Applicant claimed that the Project is necessary to increase export capability of the Palo Verde hub. *See* Application at 3. Only on cross-examination during the Committee hearings did the Applicant admit that export capability out of the Palo Verde hub is already more than adequate to serve the Phoenix metropolitan area (and will be in the future) and explicitly revealed the true purpose of the Project: to increase ***the Applicant's***

***transmission rights*** from the Palo Verde hub. The Applicant acknowledged that there is no actual need within the system to increase export capability out of Palo Verde (contrary to its claims in the Application) and that it simply wants to build the Project to increase **its** market share within the Phoenix metropolitan area. *See* October 20, 2008 Transcript at 1081:10-1082:1. In approving the CEC on these facts, the Commission breached its duty to the public, placing the interests of a well-healed public utility company ahead of the public interest. The public should not be required to bear the burden of a transmission line that is not needed simply because the Applicant wants to increase its market share and corresponding profits by virtue of the line.

The Commission's approval of the Project is especially troubling given that the public cannot have confidence in the record in this matter. As set forth in greater detail below, the Committee violated Arizona's Open Meeting Laws, the Committee's *Ex Parte* rule, and the Line Siting Statute by improperly noticing and conducting a tour of the Project during which tour the Committee considered the Project while sequestered from the public. In addition, the Committee repeatedly violated Arizona's open meeting laws and the *Ex Parte* rule by sending and receiving *ex parte* e-mails from the Applicant and various interveners. A number of those e-mails plainly addressed substantive matters regarding the Project. Although the Committee's belated attempts to cure these violations failed to comply with Arizona law, the Commission nonetheless approved the CEC.

Not only did it validate the Committee's failure to comply with the Open Meeting Laws, the *Ex Parte* rule, and the Line Siting Statute, the Commission itself failed to comply with the Line Siting Statute. Under A.R.S. § 40-360.07, the Commission is charged with reviewing

CEC's issued by the Committee "on the basis of the record." *See* A.R.S. § 40-360.07. Here, the Commission disregarded the statute, allowing an expert witness from the Commission Staff to testify on the question of need, which testimony was inconsistent with his previous testimony before the Committee, and by allowing various citizens and stakeholders to testify and offer evidence for the first time at the Commission hearings regarding siting of the Project. *See* February 20, 2009 Transcript at 345:17-23. The Commission did not provide any advance notice to 10,000 West that it intended to consider extraneous testimony and new evidence at the hearings. As a result, 10,000 West had no expert witness on hand to rebut the Commission Staff's expert testimony. The Commission's reliance on such testimony is in direct violation of Section 40-360.07.

Accordingly, 10,000 West requests that Commission grant 10,000 West's Application for Rehearing and deny the Committee's CEC as arbitrary and capricious and as made in violation of relevant Open Meeting Laws, the *Ex Parte* rule, and the Line Siting Statute.

## II. RELEVANT PROCEDURAL BACKGROUND.

On July 1, 2008, the Applicant filed its Application for a Certificate of Environmental Compatibility for the Project. *See* TS-5 to TS-9 500/230kV Transmission Line Project, Application for a Certificate of Environmental Compatibility, dated July 1, 2008, relevant portions of which are attached as Exhibit A ("Application") to 10,000 West's Brief, dated February 12, 2009 [Docket/Image No. 93707] ("10,000 West's Brief"). The Project seeks to connect two extra high voltage transmission lines (a 500kV and a 230kV line) from the Applicant's planned TS-5 Substation in Buckeye, Arizona to its planned TS-9 Substation in

Peoria, Arizona. The Application is virtually silent as to the purported necessity of the Project. Indeed, the 700 page Application only mentions the purported need for the Project two times (one minor paragraph in the Introduction and one similar paragraph within the body of the Application) and even then in the most general of ways. *See id.* at IN-1 and at 3. The Application offers no evidence supporting the Applicant's conclusory assertions of need. It contains no mention of current or future population statistics for any of the cities or towns within the Project Study Area and likewise fails to provide any information regarding the current or future load projections associated with any of the towns or cities within the Study Area. *See id.* It is also silent on the issue of renewable energy, which apparently played a large role in the Commission's decision to approve the Project. *See id.*

On August 18, 2008, hearings began before the Committee on the Application and continued intermittently through December 3, 2008. During the hearings, the Committee heard evidence from three principal witnesses regarding the need for the Project, namely John Lucas ("Mr. Lucas"), the Applicant's Project Engineer; Ray Williamson ("Mr. Williamson"), the

Commission's electrical engineering expert; and Dr. Hyde Merrill ("Dr. Merrill"), 10,000 West's electrical engineering expert.[2]

On December 29, 2008, the Committee granted the Applicant a Certificate of Environmental Compatibility ("CEC") for the Project. *See* Certificate of Environmental Compatibility, dated December 29, 2008, attached as Exhibit B to 10,000 West's Brief. As part of the.

As set forth in greater detail below, the Commission granted the CEC in spite of evidence conclusively establishing that: (1) there is no need for the Project; and (2) that the Committee materially violated Arizona's open meeting laws, the *Ex Parte* rule, and the Line Siting Statute. Moreover, and as set forth below, the Commission itself repeatedly violated the Line Siting Statue during the course of its hearings. Accordingly, the Commission should grant 10,000 West's Application for Reconsideration and deny the Committee's CEC.

## III. THE UNCONTROVERTED EVIDENCE ESTABLISHES THAT THERE IS NO NEED FOR THE PROJECT.

### A. RELIABILITY.

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[2] Dr. Merrill received his Doctorate in electrical engineering from MIT. He has been an independent consulting engineer since 1998, testifying before the Michigan Public Service Commission, the Virginia State Commission, and the Federal Energy Regulatory Commission (FERC); advising government agencies, including the World Bank, the Inter-American Development Bank, the US Congress Office of Technology Assessment, the New York State Energy R&D Authority, and the Public Utilities Commission of New York, Quebec, Panama, Venezuela, Tasmania, and Peru; and advising utilities, research and development organizations, and others on power system planning and operation. He has worked in nearly 40 countries. October 22, 2008 Transcript at 1570:1-25.

The Application states that the Project is necessary to "provide additional support and reliability for the entire electrical system." Application at 3. At the Committee hearings, the Applicant placed a heavy emphasis on its reliability claim, primarily arguing that increased reliability in the 500kV system is necessary to protect against "extreme contingencies." October 20, 2008 Transcript at 976:3-4. In an attempt to strengthen its conclusory reliability claims, the Applicant belatedly produced a three page "Extreme Contingency Report," which purported to establish that the Project is indeed necessary to protect against extreme contingencies. *See* 10,000 West's Exhibits 10-W27, Extreme Contingency Report, dated October 14, 2008, at 3. The Extreme Contingency Report was authored ***after*** the Applicant filed its Application. Thus, at the time the Applicant filed its Application, no report existed establishing a need to guard against extreme contingencies. *See id.* The Applicant compiled the Extreme Contingency Report after-the-fact to establish its reliability claim.[3]

Not only was it an after-the-fact attempt to justify the Project, the Extreme Contingency Report in no way establishes an actual need for the Project. The Extreme Contingency Report claims that the Project is necessary if any one of fifteen hypothetical contingencies were to occur involving the simultaneous loss of three completely separate extra high voltage lines anywhere within the Phoenix metropolitan area. *See id.* This is known as an N-2-1 contingency. Planning to guard against N-2-1 extreme contingencies is unheard of among

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[3] It is worth noting that the Applicant produced two different Extreme Contingency Reports. The first report was produced on July 18, 2008. Four months later, on October 14, 2008, and during the Committee hearings, the Applicant produced a significantly revised Extreme Contingency Report to correct purported deficiencies in the original report. *See* 10,000 West's Exhibits 10-W27 through 10-W30.

electric utility companies. *See* October 22, 2008 Transcript at 1593:25-594:5 (Dr. Merrill testifying "categorically, I have never heard of anybody using an N-2 or N-2-1 to justify transmission lines"). The Applicant did not present any evidence of any other transmission lines in Arizona ever being built to satisfy the N-2-1 criteria or evidence that any other transmission line has ever been built anywhere in the United States to guard against N-2-1 contingencies for that matter. Indeed, the Commission has already addressed this very issue. The Commission's 2006-2016 Biennial Report provides that:

> The extreme contingencies (Category D) require that transmission systems be evaluated for the risks and consequences, **but not for planning reinforcements.**

*See* 10,000 West Exhibit 10-W3, Fourth Biennial Transmission Assessment for 2006-2015, January 30, 2007 at 32 (emphasis added); *see also* October 20, 2008 Transcript at 1048:3-5 (Mr. Lucas confirming that "no, we are not required to build to" the N-2-1 standard). Thus, the Commission has already deemed N-2-1 contingencies to be so remote and unlikely that additional transmission lines are not to be built to protect against their occurrence.

In Arizona, the single contingency standard (or N-1 standard) governs transmission line projects. *Id.* at 1047:17-1048:21; *see also* 10-W3 at 32. The N-1 standard only requires the construction of transmission lines to protect against the loss of a single extra high voltage transmission line. *See* October 22, 2008 Transcript at 1578:8-17. Dr. Merrill testified that the Project is not needed to satisfy the N-1 standard.

> Q: Dr. Merrill, is the TS-5 to TS-9 Project needed under a single contingency standard?
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> A: . . . Mr. Lucas confirmed quite specifically that neither the 500kV nor the 230kV line is needed to meet the N-1 criteria, which again is the governing criteria and the criteria which is basically used

by every utility in the United States with occasional minor tweaking, but those tweakings are quite minor.

*Id.* at 1579:1-12.

The Applicant's own expert witness, John Lucas, agreed:

> Q: Okay. So all of your testimony this morning about extreme contingencies and all the stuff we have heard from Mr. DeWitt on that point has no bearing in terms of the NERC criteria, the WECC criteria, and is solely aspirational on APS's part?
>
> A: I would say that those standards of WECC and NERC do not require that line to be put in. I would say that, as in my testimony, that that line is needed to avoid to have such an extreme outage to our customers though.
>
> Q: But as a matter of necessity in terms of what APS is supposed to build lines for, this does not fall within those parameters?
>
> A: **Not to a NERC or WECC criteria it doesn't, no.**

October 20, 2008 Transcript at 1048:22-1049:10 (emphasis added).

The Applicant's claim that the Project is somehow needed to increase reliability flies in the face of the N-1 standard, which has already been adopted by the Commission and is the accepted standard before regulatory bodies throughout the country. Thus, the Commission's decision to approve the CEC to increase system reliability is without basis and is contravention of the standards set forth in the Commission's own Biennial Transmission Report.

**B. <u>THE LOOP</u>.**

The Application also states that the Project is necessary to "complete a continuous 500kV source from the Palo Verde Hub to the northeast valley (Pinnacle Peak Substation)." Application at 3. Like its reliability claim, the Applicant's claim that the Project is needed to complete a "loop" around the Phoenix metropolitan area is a fiction. The northwest portion of the purported loop (where the Project is proposed to be built) will be complete with or without

the Project transmission line. The Project would merely add a ***third line*** to a section of the loop that already has two lines.

> Q. Dr. Merrill, do you agree with APS's assessment that the TS-5 to TS-9 Project is necessary to complete what has been referred to as a loop around the Phoenix metro area?
>
> * * *
>
> A. My observation is that as far as the loop around Phoenix is concerned, one of the pieces that does exist is the piece on the northwest. Right here you have got a piece of the loop around Phoenix [pointing to the area of the TS-5 to TS-9 line]. When this line is built, and whatever is done down here happens, that loop will be as complete as it will be even if the TS-5 to TS-9 is built. That TS-5 to TS-9 line does not complete the loop. The loop will be as complete without the line as it will be with the line.
>
> **In fact, what this loop does is this loop adds a third line to – sorry. This line adds a third line to a side of the loop that already has two lines.**
>
> * * *
>
> **All that this line would do is beef up what looks like the strongest side of the loop already.**

October 22, 2008 Transcript at 1595:19-22, 1596:16-1597:12 (emphasis added). The Applicant did not dispute any of Dr. Merrill's finding regarding the loop on cross-examination. *See id.* at 1626:9-1627:12.

More importantly, there is no engineering rationale for building a 500kV loop. The Applicant's own expert witness, John Lucas, admitted that a loop does not serve any electrical engineering purpose:

> Q: And you say that would be a good thing. Is there any engineering rationale for having a loop?
>
> A: If we are looking at standards, no, you can't find a standard, per se, as long as you have met the N-1 criteria. But graphically that is what is put out in front of us.

October 20, 2008 Transcript at 1054:4-9.

Moreover, as various intervenors pointed out and as the Applicant acknowledged, the purported 500kV loop is not complete (nor will it ever be complete) from the Pinnacle Peak Substation to the Browning Substation. *See e.g.*, August 19, 2008 Transcript at 460:24-461:6. The Applicant made vague claims that several 230kV lines exist in the region that connect the Pinnacle Peak and Browning Substations, but failed to present any actual evidence showing that there are 230kV lines actually connecting Pinnacle Peak to Browning or that these lines could actually serve the function of completing what would otherwise be a 500kV loop. *See id.*

**C. IMPORT CAPABILITY.**

The Applicant also claims that the Project is necessary to "increase the import capability to the Phoenix metropolitan area." Application at 3. Contrary to the Applicant's conclusory claim, there is no need to increase import capability into the Phoenix metropolitan area. Dr. Merrill testified that the Project would result in an increase in import capability that is disproportionately high compared to the projected increase in load through 2012. **Dr. Merrill testified that even if the Project were never built, the Phoenix metropolitan system would still have a surplus of 900 megawatts in import capability in 2012**:

> Q: Dr. Merrill, one of APS's claims in this matter is that the TS-5 to TS-9 project is necessary to increase import capability into Phoenix?
>
> * * *
>
> A: In other words, with the TS-5 to TS-9 project, the import capability increased 1,500 megawatts more than load would increase, making the margin significantly greater than the margin in 2006 was judged to be adequate in the Biennial Report.
>
> * * *

> Although it is just an estimate, that the contribution of the TS-5 to TS-9 line of 600 megawatts, if you take those 600 megawatts only then the change in import capability between 2006 and 2016 would be 4,400 megawatts, compared to a change in load of 3,500 megawatts
>
> * * *

October 22, 2008 Transcript at 1579:13-16, 1580:11-15, 18-23. The Applicant did not cross-examine Dr. Merrill regarding this conclusion regarding import capability and never offered any evidence or rebuttal testimony to the contrary. *See id.* at 1626:9-1627:12.

Mr. Lucas admitted that there is no real need to increase import capability:

> Q: So I am obviously not an engineer, and trying to understand kind of what this is saying, but from a layman's perspective it says that the import capability into metro Phoenix is going to increase to 5,000 megawatts while at the same time the electric, the demand is only going to increase to 3500 megawatts, is that right?
> A: Yes.
>
> * * *
>
> Q: But in terms of a need, it is obvious it is being overbuilt to the tune of 1500 extra megawatts, right?
>
> A: You know, again, I would disagree with you on the issue of overbuild.
> Q: I am --
>
> A: I see your point.

October 20, 2008 Transcript at 1069:18-25, 1070:15021.

## D. EXPORT CAPABILITY FROM THE PALO VERDE HUB

The Application also claims that the Project is necessary to "increase export capability from the Palo Verde Hub." Application at 3. Like each of its other claims, the Applicant's claim that the Project is needed to increase export capability is without any basis. Dr. Merrill testified that transmission capability from the Palo Verde Hub is already more than adequate:

Q: Dr. Merrill, APS also claims that the TS-5 to TS-9 Project is necessary to increase export capability out of the Palo Verde Hub. What are your conclusions regarding that claim?

* * *

A: In other words, in 2006, the transmission capability, export capability was, oh, about 600 – 500 or 600 megawatts greater than the total generation, about a 40 percent margin. That's a lot.

* * *

So my conclusion, then, is that the transfer capability, ignoring the issue of who owns what, but just physically what you have got in the air in terms of aluminum verses what is going to be producing electricity at the Hub, the conclusion is that the aluminum in the air, the transmission capability coming out of the Hub is more than adequate. **Without this new line, the transmission capability is more than adequate to take all of the power out of that plant.**

October 22, 2008 Transcript at 1583:2-5, 1583:18-23, 1584:16-24. Once again, the Applicant did not cross-examine Dr. Merrill regarding this testimony and never offered any evidence or rebuttal testimony regarding export capability out of the Palo Verde Hub. *See id.* at 1626:9-1627:12.

Mr. Lucas even admitted under oath that there is no real need to increase export capability out of Palo Verde:

Q: So the capacity going out of the east, the 9700 number, will always be sufficient to handle whatever the Palo Verde system can generate?

A: Except we don't have rights to all those.

Q: APS doesn't have rights?

A: Yes.

Q: **But there is capacity in the system to export that electricity, right?**

A: **Yes.**

October 20, 2008 Transcript at 1081:18-1082:1 (emphasis added).

Only upon further cross-examination did Mr. Lucas finally reveal the true purpose of the Project: to increase **the Applicant's transmission rights** from the Palo Verde hub. Mr. Lucas admitted that there was no system-wide need to increase export capability out of Palo Verde (contrary to the Applicant's claims in the Application). Instead, Mr. Lucas revealed that the Applicant simply desired to increase its market share within the Phoenix metropolitan area:

> Q: So **the capacity going out of the east, the 9700 number, will always be sufficient to handle whatever the Palo Verde system can generate?**
>
> A: **Except we don't have the rights to all of those.**
>
> Q: APS doesn't have the rights?
>
> A: Yes.
>
> **Q: But there is capacity in the system to export that electricity, right?**
>
> **A: Yes.**

*Id.* at 1081:18-1082:1 (emphasis added).

By approving the Project on this basis, the Commission breached its duty to protect the public interest. Under A.R.S. § 40-360.07, the Commission is charged with balancing "the broad public interest, the need for an adequate, economical and reliable supply of power with the desire to minimize the effect thereof on the environment and ecology of this state." *Id.* Here, Mr. Lucas admitted that there is no "broad public interest" in support of the Project because an "economical and reliable supply of power" already exists in the area. *See* October 20, 2008 Transcript at 1081:18-1082:1. Mr. Lucas admitted that the public does not need more transmission capability out of the Palo Verde hub and that the Applicant simply wants to

increase **its rights** out of the Palo Verde hub and its corresponding market share and profits. *See id.* The Commission's decision to approve the CEC even though the public has no interest in increasing transfer capability from Palo Verde is arbitrary and capricious and should be reconsidered by the Commission.

**E. LOCAL LOAD GROWTH.**

The Application also claims that the Project is necessary "to serve future load growth that will emerge in the largely undeveloped areas in portions of the Town of Buckeye, City of Surprise, City of Peoria, and unincorporated Maricopa County." Application at 3. Dr. Merrill testified that there is no evidence that the Project is necessary to meet current or future load growth in those areas:

> Q: Dr. Merrill, let's talk for a moment about local area -- local load growth. As you know and you have heard, APS claims that there's a necessity for the 230 kilovolt portion of this project to serve future local load growth. What are your conclusions in that regard?
>
> * * *
>
> A: Okay, you asked about local load growth. **There's absolutely no substantiation as to how much load will be needed, how much load growth will occur, and when it will occur in the area associated with the 230kV line.**

October 22, 2008 Transcript at 1586:3-7, 21-24 (emphasis added). Mr. Lucas admitted that the Applicant had not conducted a single load study regarding the need for an additional 230kV line in the area:

> Q: So since the time that APS decided it wanted the 230 line, have you ever analyzed it from an engineering perspective to see if it is necessary?
>
> A: No. We have done no load forecasts for the 230 line.

October 20, 2008 Transcript at 1064:14-18.

As such, there is no evidence of an actual need for the 230kV portion of the Project. Because it has not conducted any load studies for the 230kV line, The Applicant's conclusory allegations that load growth may develop within 10-20 years is nothing more than a wild guess. *See* Exhibit B-2 to Application, Newsletter #3, dated November 2007. Load growth may not develop in the area for 20-30 years or possibly 30-40 years. Nobody knows because the Applicant has not presented any actual evidence on the issue and has yet to even study the issue. *See* October 20, 2008 Transcript at 1064:14-18.

In summary, Dr. Merrill testified that the Project is simply unnecessary:

> Q: Mr. Merrill, can you please describe and state your overall conclusions regarding the necessity of the TS-5 to TS-9 Project that we're discussing here today?
>
> A: ...[T]he technical need for this project on an engineering basis has not been established. It's not supported in accordance with reliability standards. It's not established that the project is needed to increase the Phoenix area import capability or the export capability of the Palo Verde Hub. It's not needed and it's not been established that it is needed to meet local area load growth, referring here to the 230kV portion of the project. And it is not justified by the extreme contingency analysis that we heard about on Monday. Finally, the project does not close a 500kV loop.

October 22, 2008 Transcript at 1572:15-17, 1573:20-1574:6. The Applicant never cross-examined Dr. Merrill on any of these points and failed (and refused) to address any of these issues in its rebuttal case despite a direct request from the Committee that it do so. *See id.* at 1626:9-1627:12. As such, the uncontroverted evidence establishes that there is no actual need for this Project.

## F. RENEWABLE RESOURCES.

In apparent recognition of the fact that the Project is not in fact necessary for any of the Applicant's originally stated reasons, the Commission placed a heavy emphasis at the hearings on the Applicant's belated claim that the Project is necessary to bring "renewable energy" into the Phoenix Metropolitan area. *See* February 19, 2008 Transcript at 58:23-59:6; 63:5-13; 67:9-18; 68:23-69:24. The Applicant's claim regarding renewables can be fairly summarized as follows: if renewable projects **are approved and built** in southern Arizona at some point in the future, including up to the year 2025, this Project may be helpful in delivering renewable energy from those projects to metropolitan Phoenix. *See* October 20, 2008 Transcript at 982-983 (testifying regarding the "renewable projects that **hope to** be able to interconnect into the hub area") (emphasis added). Nowhere did the Applicant present evidence that this Project is actually necessary to deliver renewable energy to metropolitan Phoenix.

Moreover, none of the Applicant's newsletters referenced renewable energy and the Application is likewise silent on the issue. *See* Application at 3. Nowhere did Applicant provide any evidence at the hearings regarding the specific renewable projects at issue, including when and where they allegedly will be built, who will build them, how much energy they will produce, whether the Applicant will even have any rights to the energy from those projects; or that this actual Project is necessary to deliver energy from those projects to Phoenix. October 20, 2008 Transcript at 982-983. Moreover, as the Arizona State Land Department pointed out, while the type of renewable projects referenced by the Applicant are often approved for construction, they often lack financing and are never built. *See* February 19, 2009 Transcript at 81:19-82:5.

Perhaps more importantly, the Applicant confirmed that it does not have rights to any of the renewable projects that allegedly **may be** approved for construction in Southern Arizona, other than the Gila River project. With respect to the Gila River Project, however, the Applicant admitted that its output can be delivered to metropolitan Phoenix through any number of transmission paths that do not include this Project:

> Q: . . . So it would move from Gila River up to Jojoba, and then you are not sure where it would go from there, is that correct?
>
> A: That is correct.
>
> Q: Okay. **It would have presumably several different alternative transmission paths to move into APS's load area?**
>
> A: **Correct.**

October 20, 2008 Transcript at 1130:21-1131:3 (emphasis added).

Based on the foregoing, the Commission's finding that the Project is needed to transmit renewable energy flies in the face of the evidence actually presented during the Committee hearings and, as a result, is arbitrary and capricious.

In addition to its unsubstantiated finding of need, as set forth below, the Committee repeatedly and materially violated Arizona's Open Meeting Laws, the Committee's own *Ex Parte* rule, and the Line Siting Statute. Not only did it ignore these violations, the Commission itself refused to comply with the Line Siting Statutes, relying on evidence outside of the record to approve the Project.

## IV. THE COMMITTEE AND THE COMMISSION VIOLATED RELEVANT OPEN MEETING LAWS AND/OR LINE SITING STATUTES.[4]

### A. The Line Siting Committee Violated Arizona's Open Meeting Laws, the Line Siting Statute, and the *Ex Parte* Rule.

Arizona's open meeting laws apply to public meeting of the Committee. *See* A.R.S. § 38-431, *et seq.* ("Open Meeting Laws"). Section 38-341.02(G) of the Open Meeting Laws requires that the Committee's meetings be noticed and posted with an agenda. *Id.* at § 38-431.02(G). The agenda "shall list the specific matters to be discussed, considered or decided at the meeting." *Id.* at 38-431.02(H). The "public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto." *Id.*

#### i. The July 2, 2008 and August 12, 2008 Route Tour Notices Violated Open Meeting Laws.

On July 2, 2008, the Committee filed a Notice of Hearing ("July 2 Notice"). A copy of the July 2 Notice is attached as Exhibit C to 10,000 West's Brief. Among other things, the July 2 Notice gave notice of tour of the proposed route of APS's TS-5 to TS-9 500/230kV electrical transmission line project, then being considered by the Committee ("Route Tour"):

> The Committee will conduct a tour of the Project area and the proposed routes on August 20, 2008. The map and itinerary for the tour will be available at the hearings and posted on the Project website. Members of the public may follow the Committee in their own private vehicles. During the tour, the Committee will not discuss or deliberate in any manner concerning the Application.

*See id.* Consistent with the July 2 Notice, the Committee made a map and itinerary of the Tour available at the hearings and on its website. A copy of the Route Tour Map and Itinerary is attached hereto as Exhibit 1.

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[4] 10,000 West is in the process of preparing a formal Complaint with the Arizona Attorney General regarding these violations.

On August 12, 2008, the Committee filed a supplemental Notice and Agenda ("August 12 Notice"). A copy of the August 12 Notice is attached as Exhibit 6 to APS's Brief, dated February 12, 2009. The August 12 Notice also gave notice of the Route Tour:

> The Committee plans to tour the proposed and alternate routes for the project beginning at 9:00 a.m. on August 20, 2008 . . . The Committee will travel along the route, following an itinerary which will be available at the hearing. A detailed description of the tour routes and itinerary, including a map, will be on file at the Arizona Commission . . .

*See id.* at 1-2. The August 12 Notice acknowledged that the Route Tour and all of the other meetings referenced on the agenda were subject to the Open Meeting requirements set forth in A.R.S. § 38-431.

During the final minutes of the Committee's August 19, 2008 hearings, however, with less than 24 hours before the scheduled Route Tour, the Line Siting Committee dramatically changed the itinerary. August 19, 2008 Transcript at 500:16-501:7. The Route Tour map and itinerary that had been previously filed by APS described the Route Tour as beginning at the TS-5 Substation (on the Western edge of the TS-5 to TS-9 Project) and proceeding to the East until arriving at the TS-9 Substation (on the Eastern edge of the TS-5 to TS-9 Project). On August 19, 2008, the Committee changed the itinerary to begin at the TS-9 Substation, moving West until arriving at the TS-5 Substation. *See id.* The Line Siting Committee's last minute change to the Route Tour itinerary precluded the public from attending the previously noticed Route Tour (unless they happened to be at the August 19 hearing, which was held less than 24 hours before the Route Tour). As such, the July 2 and August 12 Notices violated Section 38-341.02(G) and (H) of the Arizona Open Meeting Laws.

ii. **The Line Siting Committee's August 20, 2008 Route Tour violated the Open Meeting laws and the *Ex Parte* rule.**

On October 20, 2008, the Commission Staff raised concerns regarding the integrity of the August 20 Tour. In particular, the Commission Staff advised the Committee that it believed that the August 20 Tour violated the Arizona Open Meeting statute:

> CHMN. FOREMAN: . . . As best I can understand, the Staff believes that something inappropriate may have happened on the tours. And as a result, they have asked to question members of the Committee in other cases.

October 20, 2008 Transcript at 957:12-16.

Instead of affirming for the record that absolutely no discussions relating to the Project occurred between Members of the Committee, or between Members of the Committee and anyone else, during the August 20 Tour, Chairman of the Committee, John Foreman, ("Chairman Foreman") instructed the Committee to simply disregard the August 20 Tour:

> CHMN. FOREMAN: . . . Because there are civil and criminal, potential civil and criminal liability that is associated with that, I have taken the position in the previous cases that the better fix, rather than subjecting the Committee Members to questioning over something that no one has any factual basis for concluding occurred, would be simply to instruct the Committee Members to disregard anything that occurred on the Tour . . .
>
> * * *
>
> CHMN. FOREMAN: Correct. Thank you for your agreement.
>
> And I will instruct the Committee to disregard any reference to the tour, any information relating to the tour, and to make its decision solely on the basis of the material that has been presented here in the hearing room.

*Id.* at 957:17-25; 964:21-25.

The Commission further exasperated the problem by not requiring Chairman Foreman and Members of the Committee to appear before the Commission to explain exactly what

occurred during the Tour. As a result, the public does not know what discussions, if any, occurred during the six to seven hours that the Committee toured the Project. As such, and described below, the August 20 Tour violated both Arizona's Open Meeting laws and the Committee's *Ex Parte* rule.

**1. The August 20 Tour Violated Arizona's Open Meeting Laws.**

Arizona's Opening Meeting Laws require "that meetings of public bodies be conducted openly. . ." and that the pubic body not discuss, consider, or decide any matters not set forth in the above-referenced agenda. A.R.S. § 38-431.09.[5] The Committee's August 20 Tour violated these requirements by conducting a closed meeting within the Tour van(s) used to Tour the Project. The Tour lasted approximately 6-7 hours during which time the Committee Members were sequestered from the public, but during which time the Committee Members *considered* and likely *discussed* the preferred and alternative routes proposed by the Applicant for the Project. By doing so, the Committee violated Arizona's Open Meeting statute. *See id.* Chairman Foreman's subsequent directive to the Committee to "disregard" the Tour does not cure a violation of the Opening Meeting laws. *See* October 20, 2008 Transcript at 957:17-25; 964:21-25; *see also* A.R.S. § 38-431.05 (recognizing the ratification process as the only means of cure).

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///

[5] Pursuant to A.R.S. § 40-247(B), "[p]roceedings on any formal hearing, and all testimony, shall be stenographically reported by a shorthand reporter appointed by the commission." The Committee violated Section 40-247(B0 by failing to have a court report present during the August 20 Tour.

### 2. The August 20 Tour Likely Violated the Committee's *Ex Parte* Rule.

The Arizona Administrative Code prohibits Members of the Committee from any communications not on public record regarding any substantive matter relating in any way to the Project:

> C. Prohibitions.
>
> 1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of siting hearing to member of the Siting Committee involved in the decision-making process for that siting hearing.
>
> 2. No member of the Siting Committee shall request, entertain, or consider an unauthorized communication concerning the merits of a siting hearing.

A.A.C. § R-14-3-220(C).

To the extent that any communications were made to any Member of the Committee during the August 20 Tour, including, but not limited to, any communications between any two Members of the Committee, the Committee violated the *Ex Parte* rule. Chairman Foreman's directive to the Committee to "disregard" those communications, if any, does not cure a violation of the *Ex Parte* rule. *See id.* at (D). Instead, to cure any such violations those Committee Members involved were required to comply with the *Ex Parte* rule's disclosure requirement by:

> [A]dvis[ing] the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the siting hearing.

A.A.C. § R-14-3-220(D)(1).

None of the Committee Members have filed such a disclosure statement, although it is likely that they exchanged communications regarding the Project during the course of the August 20 Tour. The Committee Members toured the Project for approximately six to seven hours, together, in a van, and it is unlikely that they sat silent during the entire Tour and did not discuss the Project. Moreover, the Committee has acknowledged having discussions during similar Tours on other recent line siting projects. *See* Arizona Commission Staff's Request for Review and Notice of Filing of Concerns Related to Irregularities in Proceedings, filed on October 21, 2008, in Case No. 141 (noting "off-the-record discussions" had occurred "during the site tour"). Given the fact that the Committee met in a closed meeting to *consider* and likely to *discuss* the Project as part of its August 20 Tour, the interveners and the public are entitled to know what, if anything, the Committee Members discussed during the course of the Tour. To the extent any such communications did occur, the Committee's Certificate of Environmental Compatibility should be dismissed pursuant to R-14-3-220(D)(3).

**iii. E-mails to and From Chairman Foreman, the Applicant, and Interveners Violate Arizona's Open Meeting Laws and the Committee's *Ex Parte* Rule.**

On October 24, 2008, the Commission Staff filed its Request to Supplement the Record ("Request for To Supplement Record"). *See* Arizona Commission Staff's Request to Supplement the Record, dated October 24, 2008, attached hereto as Exhibit D to 10,000 West's Brief. In its Request to Supplement the Record, the Commission disclosed that "e-mail communication has been used extensively to expedite the processing of procedural issues," "to disseminate documents filed in conformance with the rules of procedure," and to distribute "potentially substantive e-mails . . . in which the Committee Members were included as well as

parties to the above-captioned matter." *Id.* at 1:13-24. The Commission Staff further noted that "**the extent and nature of the e-mail communications in this case appear to be more extensive than the off-the-record communications, e-mail or otherwise, employed in prior cases.**" *Id.* (Emphasis added)

One of the e-mails that the Commission Staff was concerned about was an e-mail that was initiated by Chairman Foreman on September 11, 2008, attaching a draft of a proposed CEC created by Chairman Foreman ("September 11 E-mail Chain"). *See* E-mail from Chairman Foreman, dated September 11, 2008, attached as Exhibit E to 10,000 West's Brief. The stated purpose of Chairman Foreman's September 11 E-mail Chain was to solicit "suggestions about how the language could be adapted for use in #138 and about how it could be improved in general." *See id.* The Chairman and the Applicant then proceeded to exchange several e-mails regarding detailed and substantive modifications to Chairman Foreman's proposed CEC. *See id.*

During the October 27, 2008 hearings, the issue of *ex parte* e-mails was raised again. This time, Commissioner Mundell acknowledged that he "remember[ed] glancing at one of [the e-mails at issue] and [he] was concerned about it . . . If I recall, it talked about the length of time of how long a CEC should be." October 27, 2008 Transcript at 1652:2-5. Commissioner Mundell further acknowledged that that e-mail was "a substantive discussion that should not be taking place in e-mails." *Id.* at 1652:14-15. Given the substantive nature of the e-mail, Commissioner Mundell (citing the Open Meeting Laws and the *Ex Parte* rule), explained that "you can't send it to the Committee . . . you can't send it to us, can't send it to the Chairman, can't send it to me. You can't send it to anybody, if it is nonprocedural." *Id.* at 1654:17-20.

During the course of subsequent hearings on Case No. 141, Chairman Mundell confirmed once again that the e-mails were in fact substantive:

> COMM. MUNDELL: .. . .And so-and I even-I said it in this hearing that I sat in on T – T-5 to TS-9. I mean, I – I thought it up in that case, that there was – there wasn't just procedural discussions in the e-mails, **but there was matters of substance.**

*See* Transcript from Case No. 141, Docket No. L-00000HH-08-0422-00141, dated December 5, 2008, at 175:14-18, attached as Exhibit F to 10,000 West's Brief. (Emphasis added).

Subsequently, on October 31, 2008, Chairman Foreman issued his Procedural Order Responding to Arizona Commission Staff's Request to Supplement Record ("Procedural Order Responding to Staff"). *See* Procedural Order Responding to Arizona Commission Staff's Request to Supplement Record, dated October 31, 2008, attached as Exhibit G to 10,000 West's Brief. In his Procedural Order Responding to the Commission Staff, Chairman Foreman attached a copy of selected provisions of the e-mail exchanges regarding the CEC that had been discussed during the October 27th hearing, acknowledging "[a]n exchange of e-mail has occurred amongst counsel for the parties the Chairman and Presiding Officer of the Arizona Power Plant and Transmission Line Siting Committee in the above captioned matter." *Id.* at 1.

In response, on November 13, 2008, the Commission submitted its Notice of Filing E-Mails to Supplement the Record ("November 13 Filing of E-mails"). *See* Notice of Filing E-mails to Supplement the Record, dated November 13, 2008, attached as Exhibit H to 10,000 West's Brief. As part of its November 24 Filing of E-mails, the Commission identified three groups of e-mails that were attached as exhibits to the November 13 Filing of E-mails, including Attachment A, purportedly consisting of procedural e-mails, Attachment B consisting

of a **"selection of e-mails that appear to be substantive in nature and that illustrate how procedural communications may inadvertently stray into substantive matters,"** and Attachment C consisting of the e-mail chain that had been filed by Chairman Foreman as part of his Procedural Order Responding to Staff, but including the e-mail's distribution list, which apparently had not been included as part of the Procedural Order Responding to Staff. *Id.* at 2:1-12 (emphasis added). Attachment B consists of a September 12, 2008 e-mail from Diamond Ventures regarding the substantive content of certain simulations being prepared by the Applicant for introduction as exhibits to the proceedings (September 12 E-mail"). *Id.* at 2:4-6 and exhibits thereto.

In addition to the substantive September 11 E-mail Chain and the September 12 E-mail, on August 22, 2008, Chairman Foreman sent an e-mail to the intervenors and to the Applicant attaching a "DRAFT spreadsheet with the positions of the parties that responded to his request to state positions" and also advising that he was "considering both a global settlement process and a trifurcated one split roughly along the lines of the Motion to Partition the Hearing" ("August 22 E-mail Chain" or "August 22 E-mail"). *See* E-mail from Chairman Foreman, dated August 22, 2008, attached as Exhibit I to 10,000 West's Brief. On August 28, 2008, the Applicant responded to Chairman Foreman's e-mail, discussing a number of obstacles to settling the case, including that any settlement was "premature until a more complete record has been created." *See id.* In response to the Applicant's e-mail, Chairman Foreman responded, stating, among other things, that "it appears the major issues of concern deal with the locations of the corridor line, the corridor width, and visual impact of the placement of the line . . . It appears the Committee will be choosing between the 'least bad' option." *See id.*

In addition to those e-mails, on August 6, 2008, Diamond Ventures sent an e-mail to Chairman Foreman and the interveners regarding the August 20 Tour, including Diamond Ventures, L.L.C.'s suggestion:

> . . . that the Route Tour include driving along SR 74 in the area encompassed by Alternative Route 3. Inclusion of this portion of SR 74 would allow the members of the Siting Committee to personally observe the topography and vegetation north of SR 74, which they would then have as background in connection with their consideration of the transmission route north of SR 74 which will be proposed by the City of Peoria, Vistancia, Diamond Ventures in the forthcoming hearings in siting Case No. 138.

*See* E-mail from Larry Robertson, dated August 6, 2008, attached as Exhibit J to 10,000 West's Brief.

Each of the above-referenced e-mails and e-mail chains plainly address substantive matters regarding the Projects in violation of either the Arizona's Open Meeting laws and/or the *Ex Parte* rule. *See* A.A.C. § R-14-3-220(C); A.R.S. § at 38-431.02. The fact that the e-mails themselves were filed as part of the record of the Committee hearings in no way cures the Committee's violations of Arizona's Open Meeting Laws. The Open Meeting Laws do not recognize subsequent disclosure as a means of cure. *See* A.R.S. § 38-431.05 (recognizing a process for ratifying actions taken in violation of the Open Meeting laws as the only means of cure). The subsequent disclosure of the e-mails likewise does not cure violations under the *Ex Parte* rule because Chairman Foreman failed to disclose a number of the e-mails, failed to advise the authors of those e-mails that the e-mails would not be considered and failed to file a Disclosure Statement regarding any of the e-mails (other than the September 11 E-mail Chain) pursuant to the *Ex Parte* rule's cure provision. *See* A.C.C. § 14-3-220(D)(1).

### iv. The Committee's Violations of the Open Meeting Laws and *Ex Parte* Rule Have Been Widely Acknowledged by the Corporation Commission and the Commission Staff.

In recent hearings involving Case No. 141, the Commission acknowledged that the Committee likely violated the Open Meeting Laws and/or the *Ex Parte* rule. *See* Transcript from Case No. 141, Docket No. L-00000HH-08-0422-00141, dated December 5, 2008, at 52:18-20, attached as Exhibit F to 10,000 West's Brief (Commission testifying that **"[s]o to think that e-mail could conduct or transact business appropriate to the committee, no it can't"** pursuant to the Open Meeting Laws) (emphasis added); *Id.* at 58:12-18, attached as Exhibit F to 10,000 West's Brief (Commissioner Mundell testifying that "**when you start involving the – the committee members, then that's where the violation, in my opinion, occurs . . . I think it's going to be fascinating to hear the legal arguments that it's not a violation**") (emphasis added); *Id.* at 125:10-13, attached as Exhibit F to 10,000 West's Brief (Commissioner Mayes testifying that "from my standpoint, this is going to have to stop, the e-mailing stops, the secret condition writing stops, and the lack of transparency stops, or I don't vote for any more CEC's coming out of this Committee").

More recently, during the Commission's hearings in this case, the Commission again acknowledged that the Committee violated the Open Meeting Laws and/or the *Ex Parte* rule. In fact, Chairman Kristin Mayes testified as much:

> CHMN MAYES: And as with the last two cases, **I am astonished that this kind of substantive e-mailing was going on behind scenes. It just was not acceptable.**

February 19, 2009 Transcript at 116:1-4 (emphasis added).

> CHMN MAYES: When you read those e-mails, it is clear that there is very, in a couple of instances, very substantive material in them that was being circulated to members of the Committee even at one point . . . **I mean there is no doubt that these e-mails should not have been passed among the Committee members**, one of which clearly proposes legal action.

February 20, 2009 Transcript at 329:9-22 (emphasis added).

Chairman Mayes went on to conclude that the violations were not ratified according the ratification framework set forth in the Open Meeting Law statute:

> CHMAN MAYES: So in this case, in this particular case, **there was not a ratification.**

*Id.* at 302:13-14 (emphasis added).

The Assistant City Attorney for the City of Surprise, James Gruber, agreed with Chairman Mayes' assessment, namely that there were violations and they were not properly cured:

> MR. GRUBER: And I have to admit I think I am reluctant to say that that cured the violation. It is not, it is not what is called for in the statute . . . **All I can say is that the statute as written wasn't complied with . . . Our position would be that there was an Open Meeting Law violation** . . . there doesn't seem to be any other remedy other than to admit that there was a violation and, therefore, that would cause the Commission to need to deny the Application so that this process could be fixed.

*Id.* at 198:24-201:3 (emphasis added).

The Commission Staff was likewise reluctant to claim that the Committee properly cured its widely acknowledged violations of the Open Meeting Laws and/or Ex Parte rule:

> MR. HAINS: **In none of these cases has staff been asserting that this is necessarily a fix** (referring to the Chairman's purported attempts to cure the violations).

February 19, 2009 Transcript at 110:3-5 (emphasis added).

> MRS. ALWARD: **I don't want it to seem as though staff and the legal division's view was that everything was fixed with these irregularities.**

February 20, 2009 Transcript at 304:21-23 (emphasis added).

> MRS. ALWARD: I think the Chairman made a unilateral decision as the presiding officer to exclude the tour and discussions, if any, occurred for a way of dealing with this. Is it the only way? **Was it a complete fix? I don't think so** . . . I could see that there is some, that **there would be legitimate uneasiness in approving this CEC in light of these questions.**

*Id.* at 305:23-306:3; 309:2-4 (emphasis added).

The Applicant itself acknowledged on the record that there were in fact violations of the Open Meeting Laws and/or the Ex Parte rule:

> MR. CAMPBELL: . . . And we just, **we just blew it in this context**, because the Commission ex part rule, while it is called ex parte, is actually broader than the standard ex parte rule in Superior Court. And I think that's because there is a recognition that the public needs to know what is going as well.

*Id.* at 324:1-7 (emphasis added).

The Commission's decision to the grant the CEC despite these acknowledged and material violations of the Open Meeting Laws, the *Ex Parte* rule, and the Line Siting Statute is arbitrary and capricious and should be reconsidered.

**v. <u>The Commission Itself Violated the Line Siting Statute.</u>**

Under A.R.S. § 40-360.07, the Commission is charged with reviewing CEC's issued by the Committee "on the basis of the record" established from the Committee's hearings. *See* A.R.S. § 40-360.07. Here, the Commission disregarded the statute, approving the CEC on the

basis of outside evidence. The Commission improperly allowed the Commission Staff to offer testimony at the Commission hearings on the question of need. The Commission did not provide any advance notice to 10,000 West that it intended to allow such testimony in contravention of Section 40-360.07. *See* Transcript at 345:17-23. As a result, 10,000 West had no expert witness on hand to rebut the Commission Staff's additional expert testimony regarding the question of need.

More importantly, the extraneous testimony that the Commission relied on from its recent hearings was inconsistent with testimony presented to the Committee. For instance, Mr. Williamson testified to the Commission that the Project was "needed" to meet the Commission's renewable energy standards:

> CHMN. MAYES: And I guess so my question is, yes, so you have answered the question that they, they would, they would need – they don't have the right now transfer capacity, but **do they need transfer capacity** to meet the RES?
>
> MR. WILLIAMSON: **It was my contention that they do** . . .

February 20, 2009 at 345:17-23.

Mr. Williamson never testified to the Committee that the Project was in fact necessary to comply with the Commission's renewable energy standards. Instead, Mr. Williamson told the Committee that the Project "**will improve access** to the renewables needed to meet Arizona's renewable energy standard and tariff rule," not that it is in fact **necessary**. October 20, 2008 Transcript at 1145:20-21 (emphasis added).

Mr. Williamson also testified before the Commission that the evidence from the Committee hearings established that the Applicant "didn't have the excess routes to get [renewables] into where their customers were." February 20, 2009 Transcript at 344:23-345:2.

Contrary to Mr. Williamson's recent testimony before the Commission, and as set forth above, the Applicant plainly acknowledged before the Committee that there are "several different alternative transmission paths to move into APS's load area." October 20, 2008 Transcript at 1130:15-1131:3. Moreover, the Commission allowed Mr. Williamson to testify on a number of new issues before the Commission that were never even raised at the Committee level. *See* February 20, 2009 Transcript at 344-346 (testifying regarding "transfer capability to California" and the necessity to approve the Project or "the plants may never be built because there no way to get the power to the customers"). Thus, not only did the Commission base its decision on Mr. Williamson's extraneous testimony in violation of A.R.S. § 40-360.07, his testimony was patently inconsistent with the record in this matter.

In addition to allowing additional and contradictory testimony from Mr. Williamson, the Commission also allowed several property owners to present testimony and new evidence regarding the proposed siting and location of the Project, all of which the Commission considered in making its decision. *See* February 19, 2009 Transcript at 6-28. The Commission's reliance on this extraneous testimony to approve the Project is in direct violation of A.R.S. § 40-360.07.[6]

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[6] In addition to its improper finding regarding the need for the Project and its failure to adhere to the Open Meeting Laws and the *Ex Parte* rule, the routes considered by the Committee were arbitrary and capricious. The Applicant's Preferred Route along Segment 1 of the Project consisted of a single alternative along the entirety of 10,000 West's property. The Applicant's failure to provide, and the Committee's failure to require, additional route alternatives along approximately 23% to 28% percent of the Project was arbitrary and capricious. *See* October 21, 2008 Transcript at 1382:10-1383:25 (Mr. Bouchard testifying that the single route alternative along that much of the Project is inherently unfair and contrary to the Committee's usual practice).

## V. CONCLUSION.

In conclusion, the uncontroverted evidence establishes that there is no actual need for this Project. The Commission's finding that there is need for the Project is contrary to the evidence actually presented during the Committee hearings and has no basis in fact or the law. Further, the Committee repeatedly and materially violated Arizona's Open Meeting Laws, the Committee's own *Ex Parte* rule, and the Line Siting Statute. Moreover, the Commission itself violated the Line Siting Statute by basing its decision on extraneous and inconsistent testimony offered at the Commission hearings in violation A.R.S. § 40-360.07. As such, the Commission should grant 10,000 West's Application for Reconsideration and deny the Committee's CEC as arbitrary and capricious and as made in violation of relevant Open Meeting laws, the *Ex Parte* rule, and the Line Siting Statute.

RESPECTFULLY SUBMITTED this 24th day of March, 2009.

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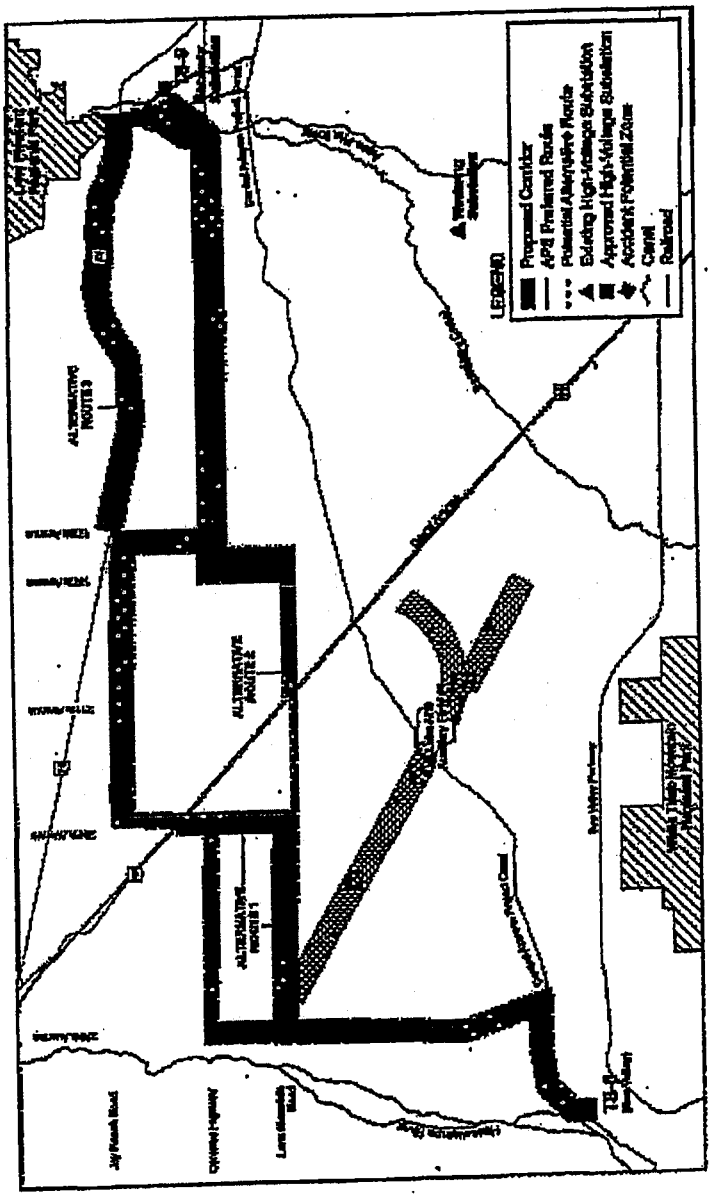
(intervenors on behalf of DLGC II and Lake Pleasant Group)

By: _____
Linda Farrell

# EXHIBIT 1


LEGEND
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Canal
Railroad
ALTERNATIVE ROUTE 3
ALTERNATIVE ROUTE 2
ALTERNATIVE ROUTE 1